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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
NANCY ROJAS-TORRES,	**Case No. 1-15-40265-cec**
Debtor	

THIRD AMENDED LIQUIDATING PLAN AS MODIFIED

Empire Assets Growth, LLC, secured creditor, (hereinafter referred to as "Empire Assets or the "Plan Proponent"), by its counsel, the Law Office of David Carlebach, Esq., hereby proposes the following Third Amended Liquidating Plan as Modified (hereinafter, the "Plan") for approval by creditors and interested parties in this case, filed under chapter 11 of the United States Code.

ARTICLE 1

DEFINED TERMS

As used herein, the following terms have the respective meanings specified below, unless the context otherwise requires (such meanings to be equally applicable to both the singular and plural, and masculine and feminine, forms of the terms defined):

1.1 **"Administrative Expense"** Any cost or expense of administration of the Bankruptcy Case entitled to priority under section 507(a)(2) and allowed under section 503(b) of the Code, including the costs of curing any executory contracts and unexpired leases pursuant to §365 of the Code.

1.2 **"Administrative Expense Claim"** A claim for payment of an Administrative Expense.

1.3 **"Allowance Date"** shall mean the date which a Disputed Claim becomes an Allowed Claim by Final Order.

1.4 **"Allowed Claim"** shall mean a Claim against the Debtor: (a) to the extent that a Proof of Claim is filed timely or, with leave of the Court late filed as to which (i) no party in interest files an objection or (ii) which is allowed by a Final Order; or (b) which is listed on the Debtor's schedules or any amendments thereto but which is not listed therein as disputed, unliquidated or contingent.

1.5 **"Allowed Secured Claim"** shall mean an Allowed Claim for which a Claimant asserts and is determined by a Final Order to hold a valid, perfected and enforceable Lien, security interest or other interest or encumbrance in property in which the Debtor has an interest not subject to avoidance or subordination under the Code or applicable non-bankruptcy law, or an Allowed Claim for which a Claimant asserts a set off under Section 553 of the Code and such Claim is allowed by Final Order, but in any event only to the extent of the value, determined in accordance with section 506(a) of the Code, of the Claimant's interest in the Debtor's interest in the property or to the extent of the amount subject to such set off, as the case may be.

1.6 "**Allowed Unsecured Claim**" shall mean an Unsecured Claim to the extent same is allowed.

1.7 "**Bankruptcy Case**" shall mean this Chapter 11 bankruptcy case of the Debtor.

1.8 "**Bankruptcy Court**" shall mean the United States Bankruptcy Court for the Eastern District of New York as defined below.

1.9 "**Bankruptcy Rules**" shall mean the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Case, including the Local Rules of the Bankruptcy Court.

1.10 "**Bankruptcy Fees**" shall mean all fees and charges assessed against the Estate and § 1930 of Title 28 of the United States Code.

1.11 "**Cash**" shall mean all cash and cash equivalents which evidence immediately available funds in United States dollars.

1.12 "**Claim**" shall mean a right to payment as set forth in § 101(5) of the Code.

1.13 "**Claimant**" shall mean the holder of a Claim.

1.14 "**Code**" shall mean Title 11 of the United States Code (11. U.S.C. § 101 et. seq.), as in effect on the Petition Date and as amended during the Bankruptcy Case.

1.15 "**Confirmation Date**" shall mean the date of the entry of the Confirmation Order.

1.16 "**Confirmation Hearing**" shall mean the hearing pursuant to the Code Section 1128 before the Bankruptcy Court regarding the proposed confirmation of the Plan.

1.17 "**Confirmation Order**" shall mean the order of the Court confirming the Plan.

1.18 "**Court**" shall mean the United States Bankruptcy Court for the Eastern District of New York.

1.19 "**Creditor**" shall mean any entity that holds a claim against the Debtor.

1.20 "**Debtor**" means Nancy Rojas

1.21 "**Disputed Claim**" shall mean the whole or any portion of any claim against the Debtor to which, an objection is timely filed as to which a Final Order has not been entered allowing or disallowing such Claim or any portion thereof.

1.22 "**Disbursing Agent**" shall mean the Law Offices of David Carlebach, Esq. ("Carlebach") as counsel to the Secured Creditor.

1.23 "**Effective Date**" is the date upon which title to the Property, a bill of sale and all relevant transfer documents are conveyed by the Debtor or other authorized party to Empire Assets Growth, LLP, or its nominee, free and clear of all liens, claims and encumbrances except the Mortgage held by Empire Assets Growth, LLP at its discretion. The closing on the transfer of title shall be consummated within twenty-one (21) days after the entry of the Confirmation Order.

1.24 "**Estate**" shall mean the estate created pursuant to § 541 of the Code upon the commencement of the Chapter 11 Case.

1.25 "**Executory Contracts**" shall mean "executory contracts" and "unexpired leases" as such terms are used within § 365 of the Code.

1.26 "**Final Order**" shall mean an order of the Court that has not been reversed, amended or stayed, and as to which the time to appeal or to seek review or certiorari thereof has expired, and as to which no appeal, review or rehearing is pending.

1.27 "**Foreclosure Action**" shall mean the action commenced Prior to filing for bankruptcy Nancy Rojas ("Rojas" or the "Debtor") engaged in protracted foreclosure litigation with Empire Assets Growth, LLC, and its predecessor-in-interest Colfin Metro Funding, LLC ("CMF"). During that litigation, the "State Court granted CMF's request to appoint a receiver (the "Receiver") over the real property known as 70-01 34th Avenue, Jackson Heights, New York 11372 also known as, 33-53 70th Street, Jackson Heights, New York 11372 (the "Property"). The Property is a multi-family investment property that consists of six residential units. Five units are occupied by tenants and one unit is occupied by the Debtor and her daughter, the New York State Supreme Court, County of Kings, captioned as "*Colfin Metro Funding, LLC v. Nancy Rojas et al.*" under Index No. 703458/2013.

1.28 **"Lien"** shall mean a charge against or interest in property to secure payment of a debt or performance of an obligation.

1.29 **"Mortgage"** shall mean that certain (i) agreement entered into between, among others, JPMorgan and CMF, and documents executed and delivered to CMF in connection therewith, CMF became the owner and holder of the Note, the Mortgage and the other Loan Documents on December 12, 2012, in the principal amount of $625,000.00, plus inter alia, interest, late charges and attorneys' fees, which instruments, as modified, were ultimately assigned to CMF and which instruments encumber the Property.

1.30 **"Petition Date"** shall mean January 23, 2015, the date of the filing of the Bankruptcy Case by the Debtor.

1.31 **"Plan"** means this Liquidating Plan, and any and all modifications and/or amendments hereto.

1.32 "**Property**" shall mean the real property of the Debtor located at 70-01 34th Avenue, Jackson Heights, New York 11372 also known as, 33-53 70th Street, Jackson Heights, New York 11372.

1.33 "**Receiver**" shall mean Jageshwar Sharma, Esq., approved pre-petition by the State Court, and continued as Receiver by Stipulation and Order of the Bankruptcy Court dated March 27, 2015.

1.33 "**Unsecured Claim**" shall mean a claim for which the Claimant does not hold (a) a valid, perfected and enforceable Lien, security interest or other interest in or encumbrance against property of the Debtor or the Debtor's Estate; (b) a right to setoff to secure the payment of such Claim. An Unsecured Claim includes, but is not limited to, a Claim for damages resulting from rejection of any Executory Contract pursuant to § 365 of the Code.

1.34 "**Unsecured Creditor**" shall mean the owner or holder of an Unsecured Claim.

ARTICLE 2

CLASSIFICATION AND TREATMENT OF CLAIMS, BANKRUPTCY FEES AND EQUITY INTERESTS

Bankruptcy Fees

2.1 **Classification:** All fees and charges assessed against the Debtor under § 1930 of Title 28 of the United States Code, which are owed to the Office of the United States Trustee.

2.2 **Treatment**: The Bankruptcy Fees and any applicable interest shall be paid by Debtor or the Receiver, in cash, in full on the Effective Date, or until this case is converted, dismissed, or closed by means of a final of decree, whichever happens first.

Administrative Claims

2.3 **Classification**: The Administrative Claims consist of the costs and expenses of administration of the Bankruptcy Case entitled to priority under § 507(a)(2) and allowed under § 503(b) of the Code, including the costs of curing any executory contracts and unexpired leases pursuant to § 365 of the Code, post-petition taxes and professional fees. The Plan Proponent estimates that total administration expenses will equal approximately $25,000.00.

2.4 **Treatment**: The Administrative Claims, subject to the Court's approval of the retention of Debtor's professionals and fee applications pursuant to § 330 of the Bankruptcy Code, shall be paid in cash in full, on the date of the entry of the Court's order approving the fee application. The only professional that the Debtor has retained has been the Debtor's counsel, Law Offices of Julio E. Portilla, P.C. ("Portilla"). Portilla has been paid a pre-petition retainer by the Debtor of $15,000.00. Based on the amount of work performed in the case, as reflected on the Court's docket, the Plan Proponent does not believe that there will be significant additional fees over and above the pre-petition retainer. The Receiver may also have commissions and unpaid expenses. All allowed administration claims will be paid in full in cash on the Effective Date.

Class I

2.5 **Classification**: Class I consists of the Secured Claims of Empire Assets Growth, LLC in the amount of $1,033,547.39, as determined by the Court, as of July 20, 2016, plus any additional, per diem accruals, through closing. The per diem amount determined by the Court is $262.97. Additionally, any further expenses or charges incurred by the Secured Creditor through closing shall be added to the final claim, and as approved by the Court if necessary.

2.6 **Treatment:** Class I Claims shall receive the following treatment: payment on the Effective Date of the Plan through the transfer of the Property to Empire Assets. Class I claims shall be satisfied upon the Effective Date provided that the Property be transferred to Empire Assets on the Effective Date, free and clear of all liens, claims, encumbrances except the Mortgage held by Empire Assets, and all other documents related to the Property have been turned over to Empire Assets or its designee, assignee or nominee.

Pursuant to § 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of any security and the making or delivery of any instrument of transfer in connection with, or in furtherance of the Plan shall not be subject to tax under any law imposing a stamp tax, real estate transfer tax, mortgage recording tax or similar tax. Empire Assets shall have the protections afforded under the "good faith" purchase provisions of § 363(m) of the Bankruptcy Code and all stay provisions under Bankruptcy Rule 6004(h) or elsewhere will be waived. Class I is an impaired class.

Class II

2.7 **Classification**: Class II consists of the Secured tax Claim of the New York City Dept. of Finance in the amount of $27,004.95, pursuant to a proof of claim filed on April 20, 2015 by the New York City Dept. of Finance.

2.8 **Treatment**: Class II Claims shall be paid the full amount of their claim as allowed. Class II is an unimpaired class.

Class III

2.9 **Classification**: Class III consists of the Secured tax Claim of New York City Water Board Department of Environmental Protection in the amount of $12,508.18, pursuant to a proof of claim filed on February 6, 2015 by the New York City Water Board Department of Environmental Protection.

2.10 **Treatment**: Class III Claims shall be paid the full amount of their claim as allowed, on the Effective Date. Class III is an unimpaired class.

Class IV

2.11 **Classification**: Class IV consists of the Priority tax Claim of the New York State Department of Finance in the amount of $738.65, pursuant to a proof of claim filed on February 4, 2015 by the New York State Department of Finance.

2.12 **Treatment**: Class IV Claims shall be paid the full amount of their claim as allowed on the Effective Date. Class IV is an unimpaired class.

Class V

2.13 **Classification**: Class V consists of the Priority tax Claim of the New York State Dept. of Finance in the amount of $3,638.86, pursuant to a proof of claim filed on April 20, 2015 by the New York State Dept. of Finance.

2.14 **Treatment**: Class V Claims shall be paid the full amount of their claim as allowed. Class V is an unimpaired class.

Class VI

2.15 **Classification**: Class VI consists of the Priority tax Claim of the Internal Revenue Service in the amount of $4,234.90, pursuant to a proof of claim filed on March 19, 2015 by the Internal Revenue Service.

2.16 **Treatment**: Class VI Claims shall be paid as follows: upon Confirmation of the

Plan, and in accordance with § 506(a) of the Bankruptcy Code, Class VI claim shall be paid the full amount of their claim as allowed. Class VI is an unimpaired class.

Class VII

2.17 **Classification**: Class VII consists of all allowed Unsecured Claims against the Debtor, (including Empire Asset's Deficiency Claim). The Debtor's Unsecured Creditors are set forth in Schedule F of the Debtor's Schedules, which were filed with the Court on January 23, 2015. The total amount of Allowed Unsecured Claims, excluding Empire Asset's Deficiency Claim, is estimated by the Debtor to be approximately $79,952.05.

2.18 **Treatment:** Holders of Allowed Class VII Claims shall be paid in full in cash, with interest, on Effective Date. Class VII is an unimpaired class.

Class VIII

2.17 **Classification**: Class VIII consists of allowed Equity Interests or Claims or Exemptions of the Debtor.

2.18 **Treatment:** Class VIII claims will be the allowed homestead exemption of the Debtor, Nancy Rojas-Torres in the amount determined by the Court to be $95,737,00, as of July 20, 2016. That amount will be reduced by the final amount of the Class I claim including additional per diem accrual or additional charges through closing. It will also be reduced by the pre-petition Class II secured claim of the New York City Dept. of Finance in the amount of $27,004.95 as well as the pre-petition Class III Secured Claim of New York City Water Board Department of Environmental Protection in the amount of $12,508.18. Class VIII Claims shall be paid in full in cash, on the Effective Date. Class VIII is an unimpaired class.

ARTICLE 3

MEANS FOR IMPLEMENTATION OF THE PLAN

3.1 The funds necessary for implementation of the plan will be provided as follows:

Administrative claims:	in full, in cash on the Effective Date from Cash Collateral and a contribution by Empire Assets.
Priority claims:	in full, in cash on the Effective Date from Cash Collateral and a contribution by Empire Assets.
Class I claims:	will be satisfied through the transfer of the Property as set forth in the Plan.
Class II claims:	in full, in cash on the Effective Date from Cash Collateral and a contribution by Empire Assets.
Class III claims:	in full, in cash on the Effective Date from Cash Collateral and a contribution by Empire Assets.
Class IV claims:	in full, in cash on the Effective Date from Cash Collateral and a contribution by Empire Assets.
Class V claims:	in full, in cash on the Effective Date from Cash Collateral and a contribution by Empire Assets.
Class VI claims:	in full, in cash on the Effective Date from Cash Collateral and a contribution by Empire Assets.
Class VII claims:	in full, in cash on the Effective Date from Cash Collateral and a contribution by Empire Assets.
Class VIII claims:	in full, in cash on the Effective Date from Cash Collateral and a contribution by Empire Assets.

3.2 Empire Assets is hereby authorized to act as nominee for the Debtor and to execute any and such Sale shall not be taxed under any law imposing a stamp or similar tax as provided for in § 1146(a) of the Bankruptcy Code. Pursuant to § 1123(a)(5)(D) of the Bankruptcy Code, the Property shall be transferred to Empire Assets, or its nominee, free and clear of any and all Liens, Claims, Encumbrances, Interests, bills, or charges whatsoever, other than the usual and customary utility easements, if any, appearing as of record or as preserved in the Plan.

ARTICLE 4

PROVISIONS FOR THE RETENTION, ENFORCEMENT AND SETTLEMENT OF CLAIMS BELONGING TO THE DEBTOR OR THE DEBTOR'S ESTATE

4.1 All rights pursuant to Sections 502, 544, 545 and 546 of the Code, all preference claims pursuant to Section 547 of the Code, all fraudulent transfer claim pursuant to Section 548 of the Code, and all claims relating to post-petition transactions under Section 549 of the Code are hereby preserved for the benefit of Debtor. Prosecution and settlement of such Claims shall be the exclusive responsibility of Debtor and all proceeds from such actions shall vest in and be the property of Debtor.

ARTICLE 5

PROVISIONS FOR THE RESOLUTION OF DISPUTED CLAIMS AND OBJECTIONS TO PROOFS OF CLAIM

5.1 **Objections to Claims**. Empire Assets or the Debtor may object to and contest to the allowance of any Claims, except Empire Asset's claims. Objections to claims must be filed no later than forty-five (45) days after the Effective Date.

5.2 **Filing of Response**. Prior to the expiration of twenty (20) days from receipt of an objection, the Claimant whose Claim has been objected to in accordance with the immediately preceding paragraph must file with the Court and serve upon the objecting party a response to such Claim objection. Failure to file such a response within the twenty (20) day time period shall give the objecting party the right to file a request that the Court enter a default judgment against the non-responding Claimant and request that the Court grant the relief requested in the Claim objection.

ARTICLE 6

RETENTION OF JURISDICTION

6.1 **Retention of Jurisdiction**. The Court shall have jurisdiction over all matters arising under, arising in, or relating to Debtor's Bankruptcy Case including, but not limited to, proceedings:

6.1.1 To consider any modification of the Plan under section 1127 of the Code;

6.1.2 To hear and determine all Claims, controversies, suits and disputes against the Debtor to the full extent permitted under 18 U.S.C. §1334 and 28 U.S.C. §157;

6.1.3 To hear, determine and enforce all Claims and causes of action which may exist on behalf of the Debtor or the Debtor's estate, including, but not limited to, any right of the Debtor or the Debtor's Estate to recover assets pursuant to the provisions of the Code and any right to determine the validity or amount of tax claims asserted against the Debtor pursuant to Section 505 of the Bankruptcy Code including, but not limited to tax claims;

6.1.4 To hear and determine all requests for compensation and/or reimbursement of expenses which may be made;

6.1.5 To value assets of the Estate;

6.1.6 To enforce the Confirmation Order, the final decree, and all injunctions therein;

6.1.7 To enter an order concluding and terminating the Bankruptcy Case;

6.1.8 To correct any defect, cure any omission, or reconcile any inconsistency in the Plan, or the Confirmation Order;

6.1.9 To determine all questions and disputes regarding title to the assets of the Debtor;

6.1.10 To re-examine Claims which may have been allowed for purposes of voting, and to determine objections which may be filed to any Claims.

ARTICLE 7

GENERAL PROVISIONS

7.1 **Headings**. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the meaning of the Plan.

7.2 **Contents of Confirmation Order**. The Confirmation Order shall contain such injunctions and other orders as may be necessary to implement the Plan.

7.3 **Transfer Taxes.** Pursuant to § 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of any security and the making or delivery of any instrument of transfer in connection with or in furtherance of the Plan shall be exempt and shall not be subject to tax under any law imposing a stamp tax, real estate Transfer Tax, mortgage recording tax or similar tax, and, to the extent provided by § 1146 of the Bankruptcy Code, if any, shall not be subject to any state, local or federal law imposing sales tax; Pursuant to § 1142(b) of the Bankruptcy Code, the Confirmation Order shall direct the Register's office to record any recordable document executed in connection with the consummation of the Plan, without the payment of Transfer

Taxes. The Office of the Register of Kings County, and any applicable Register's Office in the State of New York or its municipalities and counties shall record any recordable document executed in connection therewith without the payment of any Transfer Taxes.

7.4 **Execution of Documents.** On the Effective Date, the Debtor and any necessary party thereto, shall execute, release, and deliver all documents reasonably necessary to consummate the transactions contemplated by the terms and conditions of the Plan. Except as otherwise provided in the Plan, all assets transferred (i) by the Debtor's Estate or (ii) by any non-debtor third party in accordance with the terms of the Plan shall be, as of the Effective Date, deemed to be free and clear of all Liens, Claims and encumbrances and any and all Liens, Claims and encumbrances that have not been expressly preserved under the Plan shall be deemed extinguished as of such date. Pursuant to §§ 105, 1141(c) and 1142(b) of the Bankruptcy Code, the Debtor and the Empire Assets shall be authorized to execute, in the name of any necessary party, any estoppel certificate, or any notice of satisfaction, release or discharge of any Lien, Claim or encumbrance not expressly preserved in the Plan and deliver such notices to any and all federal, state and local governmental agencies or departments for filing and recordation, and the Confirmation Order shall expressly so provide.

7.5 **Filing of Documents.** Pursuant to §§ 105, 1141(c) and 1142(b) of the Bankruptcy Code, each and every federal, state and local governmental agency or department, shall be directed to accept and record any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transactions contemplated by the Plan, and any and all notices of satisfaction, release or discharge or assignment of any Lien, Claim or encumbrance not expressly preserved by the Plan.

7.6 **Preservation of Rights of Action.** Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement entered into in connection with the Plan, the Debtor shall retain, and enforce any claims, rights and causes of action arising under §§ 510 and 544 through 550 of the Bankruptcy Code or any similar provisions of state law, or any statute or legal theory.

7.7 **Rejection of Executory Contracts and Unexpired Leases**. On the Effective Date, all Executory Contracts and Unexpired Leases to which the Debtor is a party shall be deemed rejected in accordance with § 365 of the Bankruptcy Code. The Debtor does not believe that there are any executory contracts and unexpired leases which would be subject to rejection.

7.8 **Rejection Claims.** Allowed Claims arising from the rejection of Executory Contracts and Unexpired Leases of the Debtor shall be treated as Unsecured Claims.

7.9 **Bar to Rejection Claims.** A Proof of Claim with respect to any Unsecured Claim for damages arising from the rejection of an Executory Contract or Unexpired Lease shall not be timely filed unless it is filed with the Bankruptcy Court and served so that it is received by the Debtor within thirty (30) days after the later of (i) the date of entry of a Final Order approving such rejection (unless such Final Order expressly provides a Bar Date with respect to such Claim, in which event no Proof of Claim with respect to such Claim shall be deemed timely unless it is filed with the Bankruptcy Court and served in the manner provided in such Final Order), or (ii) the Effective Date. Any such Claim not timely filed and served shall be forever barred from assertion and may not be enforced against the Debtor, or its successors or its respective properties.

7.10 **No Payment of Disputed Claims**. This Plan contemplates the payment of Allowed Claims only. No Disputed Claims shall be paid, nor shall distributions be made to a creditor holding a Disputed Claim, until such Claim, or any part thereof, becomes an Allowed Claim, if ever.

7.11 **Notice to Plan Proponent**. Whenever this Plan requires that notice be given to the Plan Proponent such notice shall be given to:

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55 Broadway, Suite 1902
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Tel: (212) 785-3041
Fax: (347) 472-0094
Email: david@carlebachlaw.com

7.12 **Calculation of Time Periods**. Bankruptcy Rule 9006 is incorporated herein for purposes of calculating the dates set forth herein.

7.13 **Other Actions**. Nothing contained herein shall prevent the Debtor, or Creditors from taking such actions as may be necessary to consummate the Plan, although such actions may not specifically be provided for within the Plan.

7.14 **Termination of Receivership.** On the Effective Date the State Court Receiver shall be terminated by operation of law without the need for any further order of any Court and his bond shall be discharged. On the Effective Date, the Receiver shall turn over all funds in his possession, net of any unpaid expenses incurred by the Receiver, or fees and commissions due and owing the Receiver, as well as all documents of any kind of nature relating to the Receivership, to the Plan Proponent, Empire Assets.

ARTICLE 8

INJUNCTION AND RELEASES

8.1 **Injunction**. Except (a) as otherwise provided in the Plan; or (b) as otherwise provided under the Confirmation Order and entered by the Bankruptcy Court, the entry of the Confirmation Order shall forever stay, restrain and permanently enjoin with respect to any claim or interest held as of the Effective Date: (y) the commencement or continuation of any action, the employment of process, or any act to collect, enforce, attach, recover or offset from the Property or property of the Debtor's estate that has been, or is to be, distributed under the Plan, and (z) the creation, perfection or enforcement of any lien or encumbrance against the Property or any property of the Estate that has been, or is to be transferred or distributed under the Plan.

Except as otherwise provided in this Plan or Confirmation Order, the entry of the Confirmation Order shall constitute an injunction against the commencement or continuation of any action, the employment of process, or any act, to collect, recover or offset, from the Debtor, from Empire Assets or from the Property or property of the Estate, any claim, obligation or debt that was held by any person or entity as of the Effective Date except pursuant to the terms of the Plan.

8.2 **Limitation of Liability**. Neither the Debtor, Empire Assets nor any of Empire Asset's respective officers, directors, or employees (acting in such capacity) nor any professional person employed by any of them, shall have or incur any liability to any entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, Confirmation or consummation of the Plan, the Disclosure Statement, or any other action taken or omitted to be taken in connection with the Plan, except in the case of fraud, gross negligence, willful misconduct, malpractice, breach of fiduciary duty, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Nothing herein shall limit the liability of the Debtor's professionals or any other professionals employed in the case pursuant to Rule 1.8 (h)(1) of the New York State Rules of Professional Conduct. Nothing in the Plan or the Confirmation Order shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Debtor, Empire Assets, or any of their respective members, shareholders, officers, directors, employees, attorneys, advisors, agents, representatives and assigns, nor shall anything in the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Entities referred to herein for any liability whatever, including without limitation, any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in this Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Entities referred to herein.

8.3 **Plan and Confirmation Order as Release**. Except as otherwise provided in the Plan, from and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute a complete defense to any claim or liability not otherwise asserted in the Plan.

ARTICLE 9

MODIFICATIONS

9.1 **Modification of Plans.** The Plan Proponent may seek amendments or modifications to the Plan in accordance with § 1127 of the Code at any time prior to the Confirmation Date. After the Confirmation Date, the Plan Proponent may seek to remedy any defect or omission or reconcile any inconsistencies in the Plan or in the Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any modification of the Plan after the Confirmation Date shall be done on notice and a hearing.

9.2 **Notice of Modification Post-Confirmation**. No modifications will be made by the Debtor post-confirmation without notice and a hearing.

ARTICLE 10

INJUNCTION, DISCHARGE AND PROPERTY OF THE ESTATE

10.1 **Discharge**. The Debtor shall receive a discharge following the confirmation of this Plan pursuant to 11 U.S.C. §1141(d)(3), once all distributions under the Plan have been made.

10.2 **Injunction**. The Confirmation Order shall contain an injunction of the Court against the commencement or continuation of any action, the employment of process, or any act, to collect, recover or offset from the Debtor or their respective property or properties, any obligation or debt except pursuant to the terms of the Plan.

ARTICLE 11

CLOSING THE CASE

11.1 Pursuant to Local Bankruptcy Rule 3022-1, within fourteen (14) days following the full administration of its estate, the Debtor or the Plan Proponent shall file, on notice to the United States Trustee, an application and a proposed order for a final decree closing this case.

ARTICLE 12

POST-CONFIRMATION

12.1 The Debtor shall continue to file quarterly post-confirmation status reports and hold post-confirmation status conferences until the case is converted, closed, or dismissed, whichever happens earlier.

Dated: New York, New York
July 20, 2015

LAW OFFICES OF DAVID CARLEBACH, ESQ.
Attorney for Empire Assets Growth, LLC, the Secured Creditor and Plan Proponent

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